BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Station Review of Policy and Rules	)	MM Docket No. 87-8
	)	
Review of the Commission's Regulations Governing Attribution Of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154

REPLY TO OPPOSITIONS

Pursuant to Section 1.429 of the Commission's Rules, the Office of Communication, Inc. of United Church of Christ, Black Citizens for a Fair Media, Center for Media Education, Civil Rights Forum, League of United Latin American Citizens, Philadelphia Lesbian and Gay Task Force, Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights, Wider Opportunities for Women, and Women's Institute for Freedom of the Press (UCC *et al.*), by their attorneys, the Institute for Public Representation (IPR) and the Media Access Project (MAP), submit the following Reply to Oppositions to Petitions for Reconsideration regarding the *Review of the Commission's Regulations Governing Television Broadcasting, Report and Order*, MM Docket 91-221, FCC 99-209 (rel. Aug. 6, 1999) (*Local Ownership Order*) and *Review of the Commission's Regulations Governing Attribution Of Broadcast and Cable/MDS Interest,* MM Docket No. 94-150, FCC 99-207 (rel. Aug. 6 1999) (*Attribution Order).*

UCC *et al.*'s petitions for reconsideration of the *Local Ownership Order* and the *Attribution Order* generally focused on reforming the Commission's decisions in the public interest. Several petitioners filed oppositions to UCC *et al.*'s petitions, taking issue with many of our positions. This Reply addresses some of their arguments.

As a threshold matter, some petitioners attempt to draw significance from the fact that many petitions did not agree with the positions taken by UCC *et al.* *See e.g.,* NAB Opposition at 5. These petitioners, all of whom represent the interests of the broadcast industry suggest that this indicates a lack of support for the positions advocated by UCC *et al.* *See id.* Petitioners ignore the fact that UCC *et al.* represent a broad array of public interest groups from across the nation that have long advocated on behalf of viewers' rights and the public interest. In this case, various groups have joined together to protect the viewing public's First Amendment right to a multiplicity of diverse and antagonistic sources of information. That the members of this coalition filed jointly and did not file separate petitions should not lead one to conclude that the arguments lack public support. Moreover, no member of the UCC coalition has a financial stake in the outcome of the broadcast ownership rules.

In contrast, opposing petitioners do have a significant financial interest in this proceeding. And sometimes that interest does not coincide with those of the viewing and listening public. Broadcasters' petitions frequently framed their arguments in terms of broadcasters' "property rights" and raise the interests of the public as an afterthought. On issue after issue, broadcasters have taken practically the same positions because of the financial returns promised by the relaxation of the ownership rules. *Compare e.g.* NAB Petition at 2-19 *with* LSOC Petition 2-17. Thus, in reviewing the petitions for reconsideration, the Commission

should keep in mind that broadcasters necessarily have a conflict of interest, whereas UCC *et al.* do not. UCC *et al.* represent the interests of the viewing and listening public. And it is the public interest which the Commission must ultimately consider when rendering any decision. Instead of discounting UCC *et al.*'s petition as certain petitioners suggest, the Commission should in fact grant it more weight.

I. NON-COMMERCIAL STATIONS THAT DO NOT PROVIDE LOCAL PROGRAMMING TO A DMA ARE NOT "LOCAL" VOICES

In our Petition for Reconsideration, UCC *et al.* argued that the Commission should not include non-commercial television stations in the duopoly voice count. *See* UCC *et al.* Petition at 13. Specifically, we strenuously opposed counting non-commercial stations licensed to outlying communities as local voices because they generally do not provide local programming to that DMA. *See id.* We provided a few examples of this phenomenon in our petition. *See* UCC *et al.* Petition at 4-9. LSOC questions the pervasiveness of non-commercial stations from outlying communities distorting the local voice count of neighboring DMAs. *See* LSOC Opposition at 17. Implicitly acknowledging that such a situation is indeed a problem, LSOC nevertheless suggests that UCC *et al.* has not provided sufficient evidence to establish the prevalence of the problem. *See id.*

In our Petition, we cited the Pittsburgh and Washington, D.C. DMAs as demonstrating how the inclusion of non-commercial stations located in peripheral counties leads to unreasonable results.[1] Contrary to LSOC's suggestions, these are not isolated instances. A

[1] *See* UCC *et al.* Petition at 5. In addition, LSOC mischaracterizes UCC *et al.*'s position suggesting that UCC *et al.* advocates a combination Grade B contour/voice test standard. *See id.* at 15. LSOC is simply incorrect. UCC *et al.* did not propose such a combination standard. UCC

review of DMAs across the country raises numerous instances where a station located in a peripheral county of a DMA is counted as a "local" voice. *See generally* 1999 Broadcasting & Cable Yearbook (B & C Yearbook) at B154-236.

For example, the Chicago and Minneapolis-St. Paul DMAs pose the same problem. *See* B & C Yearbook at B-169 and B-203. In the case of the Chicago DMA, where the vast majority of the television households are located in Illinois,[2] there is an Indiana public television station included in the DMA. Similarly, in the Minneapolis-St. Paul case, where the overwhelming majority of the viewers within the DMA reside in Minnesota, there is a Wisconsin public television station included in the voice count.[3] Another example is the Tri-Cities DMA located in northeastern Tennessee and southwestern Virginia. The DMA includes a North Carolina public television station even though there are no North Carolina counties attributed to the DMA. *See id.* at B-228.

In all these instances, the non-commercial station is licensed to a community located on the outskirts of the DMA. Because these stations do not provide local programming to the communities found within the DMA, they simply cannot be considered a "local" voice for that DMA. Finally, this point is most salient when considering the Detroit and San Diego DMAs.

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et al. devoted a major portion of its petition debunking the voice test adopted by the Commission. *See generally* UCC *et al.* Petition at 3-13. UCC *et al.* also separately argued for the retention of the Grade B contour standard prohibiting common ownership of two stations whose contours overlapped. *See id.* at 13.

[2] *See* B & C Yearbook at B-169. More than 90% of the 3,164,150 television households are located in the state of Illinois.

[3] *See* B & C Yearbook at B-203. Nearly 95% of the 1,457,130 television households are located in Minnesota.

The Detroit DMA includes a public television station located in Ontario, Canada as a "local" voice. *See* B & C Yearbook at B-175. Similarly, the San Diego DMA includes a broadcast station located in Tijuana, Mexico as a "local" voice. See B & C Yearbook at B-221. Such television stations licensed in Canada and Mexico do not serve the local programming needs of the communities surrounding Detroit and San Diego. By definition, Canadian and Mexican stations have no public interest obligations to the viewers in the U.S.

In addition, LSOC accuses UCC *et al.* of sidestepping the issue of whether these stations can be seen on cable. *See* LSOC at 17. However, LSOC misses the point. Even if such stations are carried on cable systems serving portions of the DMA it would be irrelevant. The critical issue is that these stations are likely not supplying meaningful local programming to the viewers located in the communities of the DMA they are supposedly serving.

II. THERE IS AMPLE EVIDENCE THAT RELAXATION OF THE LOCAL OWNERSHIP RULES WILL DETRIMENTALLY AFFECT THE ALREADY DIRE STATE OF MINORITY AND FEMALE BROADCAST OWNERSHIP.

LSOC also suggests that there is no link between the local broadcast ownership rules and minority ownership. *See* LSOC Opposition at 3. LSOC argues that further relaxation of the ownership rules will not have a detrimental affect on minority ownership. To support its position, LSOC cites the negligible increase in minority-owned radio stations after the Telecommunications Act of 1996, which relaxed many broadcast ownership rules. *See id.* at 6.

LSOC again misses the point. The bottom line is that minority ownership has hovered at or below 3% for the past decade. *See* National Telecommunications and Information Administration (NTIA), *1997 Minority Commercial Broadcast Ownership in the United States* (last visited Oct. 15, 1999) <http://www.ntia.doc.gov/reports/97minority/overview.htm>. A

minor one year fluctuation in a limited sample reveals very little. The real issue is why minority ownership has remained stagnant for such a long period of time.

NTIA has compiled and maintained data on minority ownership since 1990. In its most recent report, NTIA highlights several government measures, including relaxation of the ownership rules, as being the primary causes of the rapid inflation in the price of broadcast stations and a lessened ability to raise capital on the part of minorities.[4] NTIA concludes that the relaxation of the broadcast ownership rules is partially responsible for the static growth of minority ownership. Therefore, it is only logical to conclude that further relaxation of the rules will exacerbate the already existing market entry barriers for minorities and women and continue to retard the growth in minority ownership, or even reduce the number of existing minority and female owners as such stations are bought by other stations.

III. RADIO STATIONS LOCATED IN THE SAME DMA DO NOT CREATE SEPARATE RADIO-TELEVISION COMBINATIONS

In its Opposition, Clear Channel asks the Commission to count radio stations for the purposes of the cross-ownership rule in a manner that would increase ownership concentration and disadvantage the public. Specifically, Clear Channel asks the Commission to "clarify" that for the purposes of the cross-ownership rule, radio television combinations should be evaluated separately in each distinct radio metro market, not in the DMA as a whole. *See* Clear Channel

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[4] See NTIA, *1997 Minority Commercial Broadcast Ownership in the United States* (last visited Oct. 15, 1999) <http://www.ntia.doc.gov/reports/97minority/overview.htm>. NTIA identifies the failure to extend enhancement credits for minority ownership in 1990, relaxation of the national ownership caps in 1992, repeal of the minority tax certificate program, and the 1996 Telecommunications Act., as the key governmental actions responsible for the stagnant growth.

Opposition at 8-9. Clear Channel would also exclude radio stations that fall outside of the television station's DMA when evaluating permissible combinations. *See id.*

Clear Channel's "clarification" would undermine the Commission's oft-stated goals of diversity and competition by allowing radio/television combinations to occur at a substantially higher level than a DMA based approach.[5] In the *Local Ownership Order,* the Commission set forth a three tiered cross-ownership rule that set maximum number of radio-television combinations according to the number of independent local voices remaining in the market post-merger. *See Local Ownership Order* at ¶ 100. The purpose of limiting the amount of combinations in a market was to ensure that "the local market remains sufficiently diverse and competitive." *See Local Ownership Order* at ¶ 102.

Clear Channel's proposal frustrates this purpose. The local market must be the commonly owned television station's DMA. As Clear Channel and CBS concur, "radio stations located outside the commonly owned television station DMA should not implicate the cross-ownership rule." *See* Clear Channel Opposition at 9. Conversely, all the radio stations located within the commonly owned television station's DMA should implicate the cross-ownership rule. Any other interpretation would lead to irrational results.[6] For example, even in the largest

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[5] Clear Channel also errs when it refers to radio stations as being "licensed to the television station's DMA." Clear Channel Opposition at 3. Radio stations are licensed to a community, not to a DMA or an Arbitron designated metro market.

[6] While data demonstrating the real world problems that would arise from Clear Channel's proposal are unavailable, hypothetical examples demonstrate the absurdity of its suggestion. The necessary data concerning radio metro markets for this level of analysis is not available in the B & C Yearbook. The difficulty in ascertaining the real world implications of the new voice counting centered rules is yet another reason for the Commission to open the process.

markets, those where at least twenty independent voices remain post-merger, a duopoly owner is limited to acquiring six radio stations located with the local market. *See Local Ownership Order* at ¶ 107. Under Clear Channel's proposal, if there are several radio metro markets within a commonly owned television station's DMA, then the television station owner could acquire substantially more than six radio stations in the relevant DMA. Through this reading of the rule, one entity could own two television stations and a dozen or perhaps even more radio stations in a local market. This would clearly frustrate the Commission's intent to safeguard diversity and competition within a local market. In effect, Clear Channel's "clarification" would work only to the benefit of broadcasters seeking to extend their ownership control and disadvantage the public, who suffer the diversity costs of such increased media concentration.

IV. THE COMMISSION SHOULD NOT WEAKEN THE EDP RULE

Some petitioners continue to claim that the Equity Debt/Plus (EDP) rule should be weakened because the rule will supposedly discourage investment in new entrants and result in regulatory uncertainty and a morass of paperwork. *See e.g.,* NAB Opposition at 8-10. Because UCC *et al.* thoroughly rebutted petitioners' arguments regarding new entrants in our earlier pleadings, we will limit our reply to the arguments concerning uncertainty and over breadth.

In its Opposition, NAB provides a hypothetical transaction as an example of how the EDP rule is "disturbingly vague ... and unnecessarily wide" in scope. *See* NAB Opposition at 9. Rather than support its proposition, NAB's example in fact demonstrates the clear applicability and narrow focus of the EDP rule. NAB's hypothetical involves an individual sitting on the board of directors of a broadcast licensee (XYZ Broadcast company) while also an officer of a bank (B.I.G. Bank). B.I.G. then lends money to a same market media entity. NAB argues that

the transaction demonstrates how the EDP rule will "create a 'nightmare' ... for licensees attempting to discern all attributable interests." *See* NAB Opposition at 9. Moreover, NAB concludes that under the EDP rule, such a transaction "would result in an attributable relationship where no likelihood of control actually exists." *Id.*

NAB's "nightmare" transaction in fact exemplifies how the EDP rule is an easily applicable "bright line" rule. *See Attribution Order* at ¶ 44. All B.I.G. Bank must do to ascertain whether its prior interest in XYZ Broadcast company will trigger EDP scrutiny of its investment in a same market media entity is apply the Commission's revised attribution rules, as codified in 47 C.F.R. § 73.3555 (1999). Rule 73.3555(h) makes it clear that the Bank's officer has an attributable interest in XYZ because he is on the board of directors of the licensee.[7] Thus, if the Bank's loan to a same market media entity accounts for more than 33 percent of the station's total assets, the EDP rule clearly applies.

Second, the EDP rule justifiably addresses the potential for a debt interest to influence a licensee, and thus is not too expansive. As the Commission notes in its *Attribution Order*, various studies have demonstrated that the old distinction between equity and debt under the attribution rules is a misguided one. *See Attribution Order* at ¶ 62, n. 132. Simply stated, when a debt interest is combined with "another meaningful relationship or when held by someone that has the incentive to influence the station or media entity," there is an incentive to combine the debt interests with contractual rights to gain "significant influence." *See id.* For example, in

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[7]47 C.F.R. § 73.3555(h) (1999) provides: "Officer and directors of a broadcast licensee . . . are considered to have a cognizable interest in the entity with which they are associated." This attribution rule has been on the books for years.

NAB's hypothetical transaction, B.I.G. Bank could exert influence, through its officer on the licensee's board of directors, so that the licensee will be less competitive and divide the market up with the same market media entity. The EDP rule merely gives debt and equity equal scrutiny, thus decreasing the likelihood of questionable, yet previously unattributable, debt-financed licensees that occurred under the old rules. *See* UCC *et al.* Opposition at 13-16. The Commission's treatment of debt as potentially attributable is not over broad; rather, the EDP rule corrects the under inclusiveness of the old rules.

CONCLUSION

As UCC *et al.* have argued, the local ownership and attribution rules the Commission adopted in its *Local Ownership Order* and *Attribution Order* do not satisfy the Commission's public interest mandate nor preserve competition and diversity. UCC *et al.* therefore urge the Commission to reconsider and revise these rules in accordance with the proposals set forth in this Reply and in UCC *et al.*'s earlier pleadings.

Respectfully submitted,

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Certificate of Service

I, Angela J. Campbell, hereby certify that a copy of the foregoing "Reply to Oppositions and Responses to Petitions for Reconsideration of UCC, *et al.*," was sent this Monday, December 13, via first class mail, postage prepaid to:

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